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Legal Protection for CERT Volunteers in Utah

This memorandum summarizes laws that affect emergency volunteers in Utah, including those trained under the federal Community Emergency Response Team (CERT) program. The memorandum is intended as general information and not as specific legal advice to any individual, government body, or nonprofit organization.

Executive Summary

The Utah **Good Samaritan Act** protects an individual from liability for rendering emergency care in good faith at or near the scene of an emergency, so long as the individual did not cause the emergency and does not act with gross negligence.

The Utah **AED Act** allows trained individuals to administer CPR or AED without violating state law against practicing medicine without a license.

The Federal **Volunteer Protection Act** protects volunteers from liability when they are providing service to a government entity or nonprofit organization, subject to certain conditions and exceptions.

The Utah **Governmental Immunity Act** grants immunity to volunteers working under the supervision of a public authority, except for injuries arising from their operation of a motor vehicle or in instances where the volunteer was grossly negligent, malicious, or acting in bad faith.

The Utah **Government Volunteer Workers Act** treats volunteers as government employees for purposes of immunity, insurance, indemnification, and workers compensation benefits, if their service was approved by a public authority.

The Utah **Volunteer Protection Act** protects volunteers working for nonprofit organizations from civil liability, subject to certain exceptions, if the nonprofit organization provides a "financially secure source of recovery" (such as insurance or adequate self-insurance) for persons injured by the volunteers' activities.

Note that none of these laws immunizes a volunteer from charges of criminal misconduct such as assault or trespass.

The Good Samaritan Act generally protects self-activating CERT volunteers. Those who act on behalf of a government entity or nonprofit organization may receive additional benefits. These benefits can best be secured if the CERT volunteer enrolls in advance as a volunteer with his or her city or township, or at least signs a volunteer form or list (there is no prescribed form) when reporting to authorities at the scene of an emergency.

The CERT Program

The Community Emergency Response Team (CERT) program was first developed by the Los Angeles City Fire Department in 1985 to train civilian volunteers to meet immediate needs in a major disaster such as earthquake or fire. The training program developed by LAFD was expanded by the National Fire Academy and the Emergency Management Institute to cover a wide range of public emergencies. The Federal Emergency Management Agency (FEMA) has made the training available nationally since 1993, and training has been conducted in more than half of the states (including Utah) since that time. See the CERT pages on the Citizen Corps website at www.citizencorps.gov/cert.

The CERT training curriculum is designed by FEMA and taught by a sponsoring agency. The basic course entails 21 hours of instruction. The course covers disaster preparedness, fire suppression, disaster medical operations, “light” search and rescue, disaster psychology and team organization, and a disaster simulation. There is an emphasis throughout CERT training on safety, to avoid endangering others or becoming an additional casualty in a disaster.

Thus, basic CERT training is aimed at preparing volunteers to protect themselves and their families, prevent and control small fires, perform emergency first aid and care for victims until professional help arrives, and locate and evacuate victims where that can be safely done. CERT volunteers are encouraged to take advanced training or refresher classes (many of which are also FEMA-approved courses) and to participate in drills organized by emergency management or fire authorities.

After the 9/11 terrorist attacks, President Bush established USA Freedom Corps by Executive Order in January 2002. Citizen Corps was created as a component of USA Freedom Corps to organize civilians to respond to emergencies through education, training, and volunteer service. Citizen Corps programs are coordinated nationally by the US Department of Homeland Security (DHS), which cooperates with a variety of state and federal agencies. See www.citizencorps.gov/about.shtm.

In February 2004, the Utah State Citizens Corps Council became a program and subcommittee of the Utah Commission on Volunteers. The Utah council promotes CERT and four other programs (Neighborhood Watch, Volunteers in Police Service, Medical Reserve Corps, and Fire Corps).

CERT training in Utah is conducted by several public safety authorities, including the Salt Lake Valley Unified Fire Authority (UFA) and the nonprofit Association of Volunteer Emergency Response Teams (AVERT). See the CERT Utah and AVERT websites at http://citizencorps.utah.gov/utah_cert.html and www.avertdisasters.org, respectively.

CERT trainees are encouraged to participate in local CERT teams, which can be self-activating in an emergency, helping neighbors until the authorities or professionals arrive. CERT teams can also work under the direct supervision of the authorities where that is possible.

In the jurisdictions covered by UFA, UFA has recently designated Emergency Volunteer Coordinators (EVCs) in each city and township and encouraged the municipal

authorities to “enroll” CERT teams so that the municipal authorities and UFA can more readily activate CERT teams by calling on them in an emergency.

To summarize, individuals with CERT training are trained volunteers. In their role as volunteer emergency responders, they are not government employees. Some belong to a nonprofit organization (such as AVERT, Red Cross, or a local church); others do not. In some circumstances, their activities are entirely self-directed; in others, they are directed by fire, police, or other authorities on the scene. On some occasions, a local government authority expressly asks them to respond to a disaster or report to supervising authorities. On other occasions, CERT-trained individuals may act simply because they are the first to arrive on the scene of an accident or disaster, or because the authorities are overwhelmed or communications are not possible. These varying circumstances affect the legal status and protection of CERT volunteers.

Duty to Rescue

First, it is important to note that in Utah there is no general “duty to rescue” or render assistance to a person in danger. The law in Utah, as in most of the United States, does not make it a criminal offense for a person to fail or refuse to help a stranger in grave peril, even if one could do so without significant risk of harm to himself.

That is also not grounds for a civil tort lawsuit in Utah (as in most states), unless the individual who failed to render assistance (a) created the hazard or (b) has a duty of care arising from a “special relationship” with the victim (e.g., a spouse, a parent or babysitter, a police officer or fire fighter while on duty, a teacher at school, an employer, a common carrier, a property owner with respect to guests rather than trespassers). See, e.g., *Beach v. University of Utah*, 726 P.2d 413, 415 (Utah 1986). As the Utah Supreme Court observed in *Beach*, such special relationships generally arise only when a party assumes responsibility for another's safety or deprives another of the normal opportunities for self-protection.

The problem for volunteers is this: While there may be no duty to assist a person in danger in the first place, once an individual steps in to help there is the possibility that a court applying this common-law tort doctrine would find that the volunteer had “assumed responsibility” for the victim’s safety and was therefore liable for injuries suffered because of the rescuer’s negligence.

Legislators in many of the states have worried that the fear of liability would prevent citizens from trying to rescue persons in grave danger. As a result, many states, including Utah, have adopted some form of “Good Samaritan Act” to protect rescuers from civil liability. Some states have adopted statutes that give such protection only to licensed medical professionals or off-duty public safety personnel. However, Utah’s Good Samaritan Act offers much broader protection against liability and should apply to CERT-trained volunteers as well as other individuals.

The Utah Good Samaritan Act

Utah's "Good Samaritan Act" (Utah Code Ann. §78-11-22, as amended in 2004) provides as follows:

"(1) A person who renders emergency care at or near the scene of, or during an emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency. As used in this section, "emergency" means an unexpected occurrence involving injury, threat of injury, or illness to a person or the public, including motor vehicle accidents, disasters, actual or threatened discharges, removal, or disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.

(2) A person who gratuitously, and in good faith, assists governmental agencies or political subdivisions in the activities described in Subsections (2)(a) through (c) is not liable for any civil damages or penalties as a result of any act or omission unless the person rendering assistance is grossly negligent in:

(a) implementing measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health, or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply."

Thus, **a rescuer is not liable for harm unless the rescuer was "grossly negligent" or caused the emergency.** An emergency does not have to be a mass disaster; the definition expressly includes motor vehicle accidents. The statute also expressly protects individuals assisting government authorities in a local, state, or national emergency, unless the individuals are "grossly negligent."

"Grossly negligent" is not a defined term in the statute (or in the other statutes cited below). In American judicial opinions applying the concept of "gross negligence," it is typically characterized in terms such as this: "negligence that is marked by conduct that presents an unreasonably high degree of risk to others and by a failure to exercise even the slightest care in protecting them from it and that is sometimes associated with conscious and willful indifference to their rights" (Merriam-Webster's Dictionary of Law, 2001).

Courts have construed the Utah Good Samaritan Act as exonerating merely negligent conduct by a person who stops to render aid at the scene of an emergency. *See Flynn*

v. United States, 681 F.Supp. 1500, 1507 (D. Utah 1988), *affirmed in part and remanded*, 902 F.2d 1524 (10th Cir. 1990).

Importantly, the immunity provided by Utah's Good Samaritan Act is in addition to any other immunity or protection available under state or federal law (§78-11-22(3)). Such additional sources of protection are outlined below.

Utah AED Act

The Utah "AED Act," Utah Code Ann. §26-9-7.5(2), provides that "a person who has received basic emergency care training for cardiac arrest may provide cardiopulmonary resuscitation and use a fully automatic external defibrillator without a license, certificate, designation, or permit issued under this chapter."

Thus, a trained volunteer cannot be prosecuted for practicing medicine without a license when using CPR or an AED.

The training must be a course conducted according to guidelines of the American Heart Association. CERT training does not include CPR and AED, but such classes are offered by the Greater Salt Lake chapter of the American Red Cross and others.

Federal Volunteer Protection Act of 1997 (VPA)

Volunteers acting on behalf of government bodies or nonprofit organizations are protected under the federal Volunteer Protection Act of 1997 ("VPA"), 42 U.S.C. §§14501, *et seq.* The VPA provides in §14503 that **"no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity"** if the following conditions are satisfied:

- the volunteer was acting within "the scope of his responsibilities" in the government entity or nonprofit organization
- the volunteer was licensed, certified, or authorized by the state, "if appropriate or required" (this would probably apply to licensed medical professionals, but it is not clear to what other functions the provision applies)
- the harm was not caused by "willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer"
- the harm was not caused by the volunteer operating a motor vehicle, boat, or aircraft.

VPA prohibits punitive damage awards against volunteers "unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed" (§14503(e)).

Immunity under VPA is not available if the volunteer's act constitutes a crime of violence, hate crime, or sexual offense for which the volunteer was convicted, or a violation of a federal or state civil rights law, or where it is established that the volunteer was under the influence of alcohol or drugs as defined by applicable state law. See §14503(f).

VPA generally preempts state laws providing lesser protection for volunteers. However, it expressly permits states to restrict immunity in certain ways, including requirements (such as Utah's, discussed below) that nonprofits provide insurance or other financially secure sources of compensation in the event of injury (see §14503(d)).

VPA provides an immunity defense for CERT-trained volunteers when they are acting "on behalf of" either a governmental entity or a nonprofit organization. To establish this, it would be prudent for the CERT volunteer to be enrolled as a volunteer with her city or nonprofit, or at least to sign in with authorities at the scene of a disaster. The CERT-trained volunteer is less likely to receive any benefit from VPA when he is simply the first to arrive at the scene of an accident; there, the Good Samaritan Act may be the best defense.

Utah Governmental Immunity Act

The Utah Governmental Immunity Act, Utah Code Ann. §§63-30b-1 *et seq.* includes a provision granting **immunity to volunteers working under the supervision of a public entity**:

"63-30b-2. Voluntary services -- Immunity from liability -- Exceptions. Any person performing services on a voluntary basis, without compensation, under the general supervision of, and on behalf of any public entity, shall be immune from liability with respect to any decisions or actions, other than in connection with the operation of a motor vehicle, taken during the course of those services, unless it is established that such decisions or actions were grossly negligent, not made in good faith, or were made maliciously."

"Compensation" does not include reimbursement for travel, subsistence, and other expenses incurred by the volunteer (see §63-30b-1(2)), so receiving reimbursement for such expenses does not remove immunity.

Thus, if a CERT volunteer is activated by a city or township, or reports to the scene of an emergency and is supervised by the authorities there, the volunteer could claim immunity for her actions apart from driving a vehicle, which would remain covered by the volunteer's auto insurance (unless the Utah Volunteer Government Workers Act applies as described below). Immunity would not apply, however, if the volunteer was found to have been grossly negligent, malicious, or acting in bad faith.

Note that supervision by a government authority would be easier to establish in court if the volunteer were enrolled in advance by the city or township, as UFA proposes.

Utah Volunteer Government Workers Act

Additionally, where CERT-trained individuals act at the request of a government authority, they may be treated as government employees for purposes of **immunity, indemnification, insurance, and workers compensation** medical benefits under the Utah “Volunteer Government Workers Act,” Utah Code Ann. §§67-20-1 *et seq.* (as amended through 2006). The key section of the Act reads as follows:

“67-20-3. Purposes for which a volunteer is considered a government employee.

(1) Except as provided in Subsection (2), a volunteer is considered a government employee for purposes of:

(a) receiving workers' compensation medical benefits, which shall be the exclusive remedy for all injuries and occupational diseases as provided under Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act;

(b) the operation of motor vehicles or equipment if the volunteer is properly licensed and authorized to do so; and

(c) liability protection and indemnification normally afforded paid government employees.”

A “volunteer” is defined generally as “any person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency” (§67-20-2(3)).

“Volunteer Safety Officers” (off-duty fire fighters or peace officers) are also protected, but their workers compensation claims would be handled by their employer agencies (see §67-20-3(2)).

Importantly, volunteers obtain these benefits only if their services “are approved by the chief executive of that agency or his authorized representative, and by the office of personnel having jurisdiction over that agency.” See §67-20-4. This is another reason why it would be an advantage to have CERT-trained volunteers enrolled by the city or township in advance.

Utah Volunteer Protection Act

Utah has adopted a state Volunteer Protection Act, Utah Code Ann. §78-19-1 *et seq.*, as amended through 2004. This act, similar in many respects to the federal VPA, includes liability protection for volunteers of nonprofits, with some exceptions:

“78-19-2. Liability protection for volunteers -- Exceptions.

(1) Except as provided in Subsection (2), no volunteer providing services for a nonprofit organization incurs any legal liability for any act or omission of the volunteer while providing services for the nonprofit organization and no volunteer incurs any personal financial liability for any tort claim or other action seeking

damage for an injury arising from any act or omission of the volunteer while providing services for the nonprofit organization if:

(a) the individual was acting in good faith and reasonably believed he was acting within the scope of his official functions and duties with the nonprofit organization; and

(b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal, willful, or wanton misconduct.

(2) The protection against volunteer liability provided by this section does not apply:

(a) to injuries resulting from a volunteer's operation of a motor vehicle, a vessel, aircraft or other vehicle for which a pilot or operator's license is required;

(b) when a suit is brought by an authorized officer of a state or local government to enforce a federal, state, or local law; or

(c) where the nonprofit organization for which the volunteer is working fails to provide a financially secure source of recovery for individuals who suffer injuries as a result of actions taken by the volunteer on behalf of the nonprofit organization.

Thus, **volunteers working for nonprofits are immunized from liability**, with exceptions similar to those in the VPA, but only **if the nonprofit has insurance or another “financially secure source of recovery”** for injured persons. A “nonprofit organization” is one recognized under Section 501(c)(3) of the federal Internal Revenue Code.

It is possible that CERT-trained volunteers in Utah would function in a disaster on behalf of a nonprofit organization such as the American Red Cross, AVERT, the Church of Jesus Christ of Latter-day Saints, or another community or religious institution. For such volunteers to enjoy protection from liability under this statute, it would be necessary to establish that they were, in fact, **“providing services for the nonprofit organization”** and that the organization, in turn, provided a **“financially secure source of recovery”** for persons injured by the volunteers. Unlike volunteer government workers, the volunteer acting on behalf of a nonprofit is not entitled to workers compensation benefits if injured in service.

Note on Criminal Liability

The legal protections described above do not immunize volunteers from charges of criminal misconduct. They concern only civil liability for injury or damages.

Neighbors, emergency “block captains,” and CERT-trained volunteers should be aware that entering private property, such as a residence, that is not open to the public can constitute criminal trespass, a misdemeanor under Utah Code. Ann. sec. 76-6-206. It is lawful to enter private property if invited by the property owner, but that might be hard to prove after the fact, especially if the volunteer was alone and had no witnesses.

Firefighters and police operate under somewhat different legal rules, and they are far more likely to be recognized by residents in peril. Volunteers have to be more circumspect about rushing into someone's home. They could be prosecuted – or worse.

Similarly, a volunteer rescuer could conceivably be charged with assault, sexual assault, or kidnapping if he or she examines and forcibly removes a victim. The Good Samaritan Act and the federal and state Volunteer Protection Acts do not immunize a rescuer from having to defend himself against such criminal charges. This is another good reason for acting in teams, according to training, and with witnesses. Note that the FEMA-approved CERT training materials instruct volunteers to call for victims to come out on their own if they can, and not to treat or remove victims against their will.

Apart from the possibility of misdemeanor charges, neighbors, block captains, and other volunteers should consider how a frightened resident might react violently to a civilian “intruder” in the home. Moreover, an untrained volunteer is generally not qualified to assess whether it is safe to enter a damaged building in the first place, or to engage in search and rescue efforts on his own; he risks becoming a casualty himself. If a CERT team responds to an emergency, there are several individuals who can assess the safety of the structure and the rescue effort, bear witness to the circumstances and events (including any communications with the people inside), and more safely conduct light search and rescue efforts if appropriate.

Conclusions

The Good Samaritan Act should protect CERT-trained volunteers from liability in most instances, even when they are acting entirely on their own. Additional protection is available from the federal VPA, as well as from Utah statutes providing immunity, insurance, indemnification, and workers compensation benefits for volunteers acting under the authority of a municipality or other government entity. It would appear that the volunteer in Utah generally has greater protection and benefits when acting on behalf of a government entity than when serving on behalf of a nonprofit organization.